



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590



NOV 30 2009

REPLY TO THE ATTENTION OF: C-14J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James M. Graziano, Esq.
Archer & Greiner, P.C.
One Centennial Square
Haddonfield, New Jersey 08033-0968

RE: NL Industries, Inc. – Dutch Boy Site, Chicago, Illinois
CERCLA Section 122(h)(1) Settlement Agreement

Dear Mr. Graziano:

Enclosed is a copy of the fully-executed CERCLA Section 122(h)(1) Administrative Settlement Agreement for Recovery of Past Response Costs for the Dutch Boy Site in Chicago, Illinois (the Settlement Agreement). The public comment period provided by paragraph 34 of this Settlement Agreement began on October 1, 2009 and ended on November 2, 2009. EPA received no written comments. Pursuant to paragraph 35, the effective date of this Settlement Agreement is the date of this letter.

Section V of the Settlement Agreement requires NL Industries, Inc. to pay EPA \$165,709.61, plus an additional sum for interest on that amount calculated from September 1, 2008 through December 29, 2008, within 30 days of the effective date of the Settlement Agreement.

Thank you for your cooperation in resolving this matter. Please contact me at (312) 886-4670 if you have any questions.

Sincerely,

Christine M. Liszewski
Associate Regional Counsel

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CERCLA SECTION 122(h)(1) ADMINISTRATIVE SETTLEMENT AGREEMENT
FOR RECOVERY OF PAST RESPONSE COSTS**

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TABLE OF CONTENTS

I.	<u>JURISDICTION</u>	3
II.	<u>BACKGROUND</u>	3
III.	<u>PARTIES BOUND</u>	4
IV.	<u>DEFINITIONS</u>	4
V.	<u>PAYMENT OF RESPONSE COSTS</u>	6
VI.	<u>FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT</u>	6
VII.	<u>COVENANT NOT TO SUE BY EPA</u>	8
VIII.	<u>RESERVATIONS OF RIGHTS BY EPA</u>	8
IX.	<u>COVENANT NOT TO SUE BY SETTLING PARTY</u>	8
X.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION</u>	9
XI.	<u>RETENTION OF RECORDS</u>	10
XII.	<u>NOTICES AND SUBMISSIONS</u>	11
XIII.	<u>INTEGRATION</u>	12
XIV.	<u>PUBLIC COMMENT</u>	12
XV.	<u>EFFECTIVE DATE</u>	12

**CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT
FOR RECOVERY OF PAST RESPONSE COSTS**

IN THE MATTER OF:)	AGREEMENT FOR RECOVERY
)	OF PAST RESPONSE COSTS
Dutch Boy Site)	
Chicago, Illinois)	U.S. EPA Region 5
)	CERCLA Docket No.
NL Industries, Inc.)	V-W-10-C-941
SETTLING PARTY)	PROCEEDING UNDER SECTION
)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Director of the Superfund Division.

2. This Settlement Agreement is made and entered into by EPA and NL Industries, Inc. ("Settling Party"). The Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Dutch Boy Site ("Site") located in Chicago, Illinois. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. On March 26, 1996, EPA issued a unilateral administrative order ("Order"), Docket No. V-W-96-C-347, to the Settling Party under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The Order required, among other things, that the Settling Party perform an extent of contamination survey, develop a risk management plan and implement the alternative approved by EPA to abate the hazards associated with lead-contaminated soils both on-site and beyond the

boundaries of the Site. On March 27, 2000, EPA issued a letter to the Settling Party stating that the on-site removal action required by the Order had been completed. On September 17, 2007, EPA issued another letter to the Settling Party stating that the off-site work required by the Order had been completed. Subsequently, the City of Chicago ("City"), the current owner of the Site, informed EPA that at least three soil samples collected by the City in June 2007 from an area of the Site where the Settling Party conducted cleanup under the Order exceed the cleanup level set by EPA. These soil samples were collected at depths of two-and-a-half feet or more below ground surface. The City has requested EPA to conduct additional sampling in this area of the Site and EPA has agreed.

5. In performing response actions related to the Site, EPA has incurred response costs at or in connection with the Site. To date, the Settling Party has reimbursed EPA \$248,594.75 for its response costs.

6. EPA alleges that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

7. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

8. EPA and the Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon the Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XV.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Settling Party.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site including all costs related to the off-site work described in Paragraph 4, above, through August 31, 2008, plus accrued Interest on all such costs through such date.

i. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

j. "Settlement Agreement" shall mean this Settlement Agreement. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

k. "Settling Party" shall mean NL Industries, Inc.

l. "Site" shall mean the Dutch Boy Superfund site, encompassing approximately five acres, located at 12000 to 12054 South Peoria Street and 901 to 935 West 120th Street in Chicago, Cook County, Illinois, and generally designated by the following property description:

The Site is located in Block 7, and on a strip of land immediately south and adjacent to Block 7, in the first addition to West Pullman, a subdivision of the north east 1/4 of Section 29, Township 37 north, range 14 east of the Third Principal Meridian, located in the City of Chicago, Cook County, Illinois. The Site property consists of the eastern 375.20 feet of Block 7 (Parcel 1), and a strip of land, (Parcel 2) 375.20 feet by 30 feet, located

immediately adjacent and south of Block 7. The Site property, which is rectangular in shape, occupies 5.00 acres in Parcel 1, and approximately 0.25 acres in Parcel 2.

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

11. Within 30 days of the effective date of this Settlement Agreement, the Settling Party shall pay to EPA \$165,709.61, plus an additional sum for Interest on that amount calculated from September 1, 2008 through December 29, 2008.

12. Payment shall be made to EPA by Electronic Funds Transfer payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the name and address of the Settling Party making payment, the Site name, the EPA Region and Site/Spill ID Number 05VG and the EPA docket number for this action.

13. At the time of payment, the Settling Party shall also send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 05VG and the EPA docket number for this action.

14. The total amount to be paid pursuant to Paragraph 11 shall be deposited in the Dutch Boy Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

15. Interest on Late Payments. If the Settling Party fails to make any payment required by Paragraph 11 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

16. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 11 are not paid by the required date, the Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$5,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number, and the EPA Docket Number for this action. The Settling Party shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

c. At the time of each payment, the Settling Party shall also send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions). Such notice shall identify the EPA Region and Site Spill ID Number 05VG and the EPA Docket Number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of the Settling Party's failure to comply with the requirements of this Settlement Agreement, any Settling Party who fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse the Settling Party

from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

VII. COVENANT NOT TO SUE BY EPA

19. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its obligations under this Settlement Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against the Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 19. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against the Settling Party with respect to:

- a. liability for failure of the Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

21. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

22. The Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Illinois, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION

24. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613, defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

25. EPA and the Settling Party agree that the actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by the Settling Party. The Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.

26. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that the Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are "Past Response Costs." The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Settling Party has, as of the Effective Date, resolved its liability to the United States for Past Response Costs.

27. The Settling Party shall, with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Party shall, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

28. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

XI. RETENTION OF RECORDS

29. Until 10 years after the effective date of this Settlement Agreement, the Settling Party shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the 10-year document retention period in the preceding paragraph, the Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, the Settling Party shall deliver any such records to EPA. The Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. The Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

31. The Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification

of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

32. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, with a copy to such Parties at the facsimile or email address provided below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and the Settling Party.

As to EPA:

Christine Liszewski
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604
Fax: (312) 692-2468
Email: liszewski.christine@epa.gov

and

Dion Novak
On-Scene Coordinator
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd. (SR-6J)
Chicago, IL 60604
Fax: (312) 692-2472
Email: novak.dion@epa.gov

As to Settling Party:

Christopher R. Gibson, Esq.
Archer & Greiner, P.C.
One Centennial Square
Haddonfield, New Jersey 08033-0968
Fax: (856) 795-0574
Email: cgibson@archerlaw.com

XIII. INTEGRATION

33. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XIV. PUBLIC COMMENT

34. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XV. EFFECTIVE DATE

35. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to the Settling Party in accordance with Section XII, above, that the public comment period pursuant to Paragraph 34 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

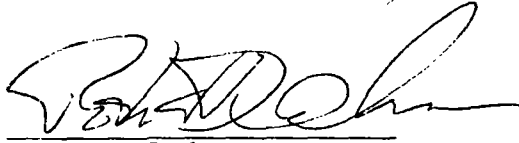
By: Richard C. Karl
Richard C. Karl
Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
Chicago, Illinois 60604

Date: 9-3-09

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of the Dutch Boy Site, Chicago, Illinois:

FOR SETTLING PARTY: NL Industries, Inc.

By:



Robert D. Graham
Vice President and General Counsel
NL Industries, Inc.
Three Lincoln Centre
5430 LBJ Freeway, Suite 1700
Dallas, Texas 75240-2697

Date:

July 31, 2009